1892.
~~1265.~~

SUPREME COURT OF THE UNITED STATES.

No. 154.

LESSEE OF WILLIAM J. WHITTHORN, PLAINTIFF IN ERROR,

vs.

MARTHA A. TAYLOR AND JOHN A. BLAKEMORE.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS OF THE STATE OF TENNESSEE.

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J. & G. S. Gideon, printers.

THE UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court of the United States, for the district of Middle Tennessee, greeting:

State of Tennessee, to the judges of the Supreme Court of the United States.

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which [is] in the said supreme court, before you, or some of you, between John Doe, lessee of William J. Whitthorn, plaintiff, and Martha A. Taylor and John A. Blakemore, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, *we* command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of [January] next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected by the said Supreme Court, [they] may cause further to be done therein, to correct that error, what of right and according to the law and custom of the Uinted States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of , in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the 71st.

JACOB M. GAVOCK,
Clerk of the circuit court for the district of Middle Tennessee.

STATE OF TENNESSEE:

Know all men by these presents, that we, William J. Whitthorne and , are held and firmly bound unto Martha A. Taylor and Jehu A. Blakemore, their heirs, executors, administrators, or assigns, in the penal sum of two hundred dollars; which payment, well and truly to be made, we bind ourselves, and each of our heirs, executors, administrators, or assigns. As witness our hands and seals, this 11th day of September, A. D. 1846.

The condition of the above obligation is such, that whereas the above bound William J. Whitthorne hath prayed for and obtained an appeal from a judgment of the supreme court of the State of Tennessee, rendered at its December term, 1844, against him, and in favor of the said Martha A. Taylor and Jehu A. Blakemore, for costs of suit, to the Supreme Court of the United States.

1893.
1660.

Now, if the said William J. Whitthorne shall prosecute his said appeal with effect, or, in case he fail therein, will well and truly abide by and perform whatever judgment or decree said Supreme Court of the United States may render thereon, then the above obligation to be null and void, else to be and remain in full force and virtue.

WILLIAM J. WHITTHORN, [SEAL.]
HARDEN P. BOSTICK. [SEAL.]

Test: GEO. S. CLARK, *D. C.*

The bond and security for costs in this cause is approved, and the writ of error allowed. September 18th, 1846.

J. CATRON,
An Asso. Jus. S. C. U. S.

The United States, eighth circuit, district of Middle Tennessee, to Martha A. Taylor and Jehu A. Blakemore, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 8th circuit, in the district of Middle Tennessee, wherein John Doe, lessee of William J. Whitthorne, is plaintiff in error, and Martha A. Taylor and Jehue A. Blakemore are defendants; to shew cause, if any there be, why the judgment rendered against the said William J. Whitthorne, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, an associate justice of the Supreme Court of the United States.

J. CATRON,
An Asso. Jus. S. C. U. S.

September 18th, 1846.

STATE OF TENNESSEE, *Lincoln county, ss:*

On this 10th day of October, in the year of our Lord one thousand eight hundred and forty-six, personally appeared before me Jesse B. Clements, and being duly sworn, deposeth and saith, that on the 10th day of October, 1846, he delivered a true copy of the above citation to Jehu A. Blakemore, and that Martha A. Taylor is not to be found in his district, not being a citizen thereof, as he is informed and believes.

Sworn to and subscribed before me, this 10th day of October, 1846.

ANDREW J. MARCHLAUK,
Judge of, &c.

Issued 18th September, 1846. Came to hand same day issued.

Executed this citation on Jehue A. Blakemore on the 10th day of October, 1846, and delivered to him a true copy of the same. Martha A. Taylor not found in my district, nor is she a citizen of the same, as I am informed and believe.

J. B. CLEMENTS,
Marshal Middle District of Tennessee.

Marshal's fees.

Executing citation - - - - -	$2 00
One copy of the same - - - - -	1 00
110 miles travelled at 5 cents per mile - - -	5 50
	$8 50

J. B. CLEMENTS,
Marshal M. D. Ten.

STATE OF TENNESSEE:

Be it remembered, that heretofore, to wit, on the 14th day of December, A. D. 1844, a transcript of the record in the case of John Doe, lessee of William J. Whithorn, against Martha A. Taylor, was filed in the office of the clerk of the supreme court of errors and appeals of the State of Tennessee, at Nashville, in the following words and figures, to wit:

STATE OF TENNESSEE:

Pleas at the court house in the town of Shelbyville, in the county of Bedford, on the first Monday in April, A. D. 1844, before the hon. Samuel Anderson, one of the judges of the circuit court of the State of Tennessee:

Be it remembered, that heretofore, to wit, on the 22d day of August, A. D. 1843, John Doe, lessee of William J. Whitthorn, sued out of the office of the clerk of the circuit court of Bedford county a writ of summons against Martha A. Taylor; which writ of summons is in the words and figures following:

STATE OF TENNESSEE:

To the sheriff of Bedford county, greeting:

You are hereby commanded to summon Martha A. Taylor, if to be found in your county, to appear before the judge of our circuit court, to be held for the county of Bedford, at the court house in the town of Shelbyville, on the first Monday in December next, then and there to answer John Doe, lessee of Wm. J. Whitthorn, in a plea wherefore, with force and arms, she broke the plaintiff's close, to his damage five hundred dollars. Herein fail not, and have you then and there this writ.

Witness John T. Neil, clerk of our said court, at office, the first Monday in August, A. D. 1843, and in the 68th year of American independence.

JOHN T. NEIL, *Clerk.*

I acknowledge myself indebted to Martha A. Taylor, the defendant in the above suit, in the sum of two hundred and fifty dollars, to be void on condition John Doe, plaintiff, prosecute his action of ejectment, this day commenced against said Martha A. Taylor, in the circuit court

of Bedford county, with effect, or payment of all costs and damages incident on failure thereof.

Witness my hand and seal this 22nd Aug't, 1843.

WM. H. WISENER. [SEAL.]

Which writ of summons was afterwards, to wit, on the 24th August, 1843, placed in the hands of James Mullins, high sheriff of Bedford county, and was by the said Mullins returned into the circuit court of Bedford county on the first Monday in December, 1843, with the following endorsements, to wit:

Issued 22nd August, 1843; came to hand 24th August, 1843.

J. MULLINS, *Sh'ff.*

Executed this summons on Martha A. Taylor, and delivered her a copy of complainant's bill in ejectment, this 10th Sept., 1843.

J. MULLINS, *Sh'ff.*

And thereupon came the plaintiff, by his attornies, Wisener & Steele, and filed his declaration in this case, which is as follows, to wit:

STATE OF TENNESSEE, *Bedford county:*

Circuit court, December term, 1843.

John Doe, lessee of Wm. J. Whitthorn, complains of Richard Roe, of a plea of trespass, wherefore he broke and entered his close; for that, whereas, heretofore, to wit, on the 21st day of August, 1843, the said William J. Whitthorn was seized and possessed, in fee simple, of his own right, of a certain tract of land, with the appurtenances, in the county aforesaid, and bounded as follows, to wit: Beginning at a stake in the road; thence, northeast, nine poles to a stake; thence, east, seventy-one poles to a double dogwood and two hickories; thence, north, one hundred and five poles to a stake; thence, west, one hundred and twenty-five poles to a sour oak; thence, south, ninety-five poles to a stake on the road; thence, southeast, forty-five poles to the beginning, containing, by estimation, eighty acres. And he, the said William J. Whitthorn, being thereof lawfully possessed as aforesaid, afterwards, to wit, on the day and year last aforesaid, demised, rented, and to farm let, the said tract of land and appurtenances, to the said plaintiff, for the full term of seven years. And he, the said plaintiff, then and there entered upon the premises and enjoyment of his term aforesaid, and, being thereof lawfully possessed, he, the said Richard Roe, on the day and year last aforesaid, with force and arms, entered in and upon the aforesaid land and ejected said plaintiff out of his aforesaid possession, and before his term aforesaid had expired, and other wrongs to him, the said plaintiff, then and there did, and to his damage five hundred dollars; and therefore he brings suit.

WISENER & STEELE,
Atto's for the plaintiff.

Mrs. MARTHA A. TAYLOR:

I am informed you are in possession of a claim-title to the land in this declaration mentioned, and I being sued in this action as a

casual ejector only, and having no claim to the land myself, I advise you to appear at the court house in Shelbyville, on the first Monday in December next, and then and there, by a rule of court, cause yourself to be made a defendant to said suit, or I will suffer judgment to go by default, and you will be turned out of possession.

RICHARD ROE.

Defendant pleads not guilty.

FRIERSON & COOPER,
Atto's for defendant.

And thereupon, at the April term of said court, 1844, to wit, on the 13th day of April, 1844, the following proceedings *was* had in this cause, which was in the words and figures following, to wit:

JOHN DOE, lessee of Wm. J. Whitthorn,
vs.
RICHARD ROE.

This day came the parties, by their attornies, and thereupon, on application of Jehue A. Blakemore, he is admitted the defendant in this cause, in the room and stead of Richard Roe, the casual ejector, upon his agreeing to enter into the common rule, to admit lease, entry, and ouster, plead not guilty, and for his trial rely upon his title only. And thereupon came here, in open court, William D. Orr, and acknowledged himself the surety of the said Jehue A. Blakemore in the sum of two hundred and fifty dollars, to be void on condition that the said John A. Blakemore does successfully defend this suit, or pay and satisfy all such costs and charges as may be adjudged against him in case of conviction.

And thereupon came the parties, by their attornies, and filed in this case the agreed state of facts, which was made a part of the record, and is in the words and figures following, to wit:

WILLIAM J. WHITTHORN'S lessee
vs.
MARTHA A. TAYLOR and J. A. Blakemore.

In this it is agreed, by the parties, that the land in controversy belonged to one Charles Coats, and that the lessor of the plaintiff, and defendant Blakemore, hath title from him. It is also agreed that said Coats made a conveyance to said Martha A. Taylor, which was fraudulent and void, as to the titles of the lessor of the plaintiff, and defendant Blakemore; and that defendant Martha A. Taylor was in possession of the premises at the commencement of this suit, claiming under defendant Blakemore, or as his tenant. It is further agreed, that, at the April term, A. D. 1842, of the circuit court of Bedford county, in which the land in dispute lies, one Jonathan Cooper, said Coats, defendant Blakemore, and one Wilson Turntine, confessed a judgment in favor of Davidson, Caldwell & Co., on a bill of exchange, for about

the sum of $400 00; and that, in consideration of the confession of the judgment aforesaid, the plaintiffs therein agreed, of record, to stay execution until the August term next thereafter of said circuit court, and that execution was accordingly stayed for that length of time. It is further agreed that Cooper was the acceptor, Coats 2nd endorser, and Blakemore the 3rd, and Turntine the fourth endorser of the bill of exchange, upon which judgment was confessed as aforesaid. It is further agreed, that an execution issued on the said judgment, tested the first Monday in August, 1842, and that, by virtue thereof, the land in dispute was sold by the sheriff of Bedford county, and defendant Blakemore became the purchaser, and has a sheriff's deed; all of proceedings under said execution and sale are admitted to be regular, and the judgment would receipt as against the bankrupt law, which question is open for the adjudication of the court. It is further agreed, that Charles Coats, within eight or ten days after he confessed the judgment aforesaid in favor of Davidson, Caldwell & Co., filed his petition in bankruptcy in the proper court at Nashville; and that some time in May, 1842, he was duly declared a bankrupt; and that, on his filing his petition for a discharge, and certificate, and hearing thereof, the prayer of said petition was not granted, but his discharge and certificate was refused by the court. It is further agreed, that the assignee in bankruptcy sold the land in this controversy, and that the lessee of the plaintiff became the purchaser, and has a deed from the assignee for the same. It is further agreed, that the proceedings in bankruptcy and sale of land are all regular. It is further admitted that the deed from the assignee to the plaintiff's lessor, and the sheriff's deed to defendant Blakemore, were executed before the commencement of this suit. It is further agreed, that Davidson, Caldwell & Co., had commenced a suit upon the bill of exchange, against the parties thereto, returnable to the April term, 1842, of the circuit court of Bedford county, which was pending at the time the judgment aforesaid was confessed, and that Davidson, Caldwell & Co., had no knowledge, at the time said payment was confessed, that said Coats contemplated availing himself of the bankrupt law. If Coats had defended said suit, judgment would not have been obtained before August term, 1842, that is, the case would have stood for trial at that time. If he had made no defence, judgment interlocutory would have been obtained at the term when it was confessed. Defendant Blakemore purchased on the 29th day of October, 1842, and immediately thereafter obtained a sheriff's deed, and had it registered in the register's office of Bedford county. When said Coats filed his schedule it did not contain said tract of land. It was not until February or March, 1843, that the creditors of said Coats, of whom defendant Blakemore was one, took testimony on the subject, and had it inserted in his schedule. W. J. Whitthorn's deed has been duly registered in Bedford county before commencement of this suit. If the court should be of the opinion, from the facts above agreed, that law is with the plaintiff, judgment will be rendered in his favor, as upon the verdict of the jury finding the facts. But if the court should be of the opinion

that the law is with the defendants, judgment will be rendered for them in the same way, either party reserving the right to appeal.

W. H. WISENER,
Atto. for pl'ff.
E. J. TURNER,
Atto. for def't.

And afterwards, to wit, at the April term, 1844, of the circuit court of Bedford county, to wit, on the 13th April, 1844, this proceeding was had in this case, to wit:

JOHN DOE, lessee of Wm. J. Whitthorn,
vs.
MARTHA TAYLOR and J. A. BLAKEMORE.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit: Anthony W. Reager, Thomas Holland, John Koonce, jr., Jno. Lane, Isham Reaves, Andrew Presgrove, Wm. Potter, Asa Stem, Joseph Holb, John Didson, Peter E. Clardy, and Thomas Conch, who, being elected, tried, and sworn the truth to speak upon the issue joined, upon their oaths do say, that the defendants are guilty of the trespass and the ejectment in the declaration mentioned, and they do assess the plaintiff's damages, by reason of the premises, to *one cent*. It is therefore considered by the court, that the plaintiff recover of the defendants his term yet to come of and in the premises in declaration mentioned, and that he have thereof his writ of possession.

It is further considered by the court, that the plaintiff recover of the defendants the damages aforesaid, in form aforesaid assessed by the jury, together with his costs by him in and about his suit in this behalf expended; for which let execution issue, &c.

In this case the parties filed here in court an agreement of the facts in this case, which is ordered to be made a part of the record in this case.

And the defendants pray an appeal, in the nature of a writ of error, to the next term of the supreme court of errors and appeals, to be held in the city of Nashville, on the first Monday in December next, which is to them granted, they having given bond and security according to law.

Know all men by these presents, that we, Jehue A. Blakemore and , of the county of Bedford, and State of Tennessee, are held and firmly bound unto John Doe, lessee of William J. Whitthorn, in the sum of two hundred dollars; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 13th day of April, 1844.

The condition of the above obligation is such, that whereas the above bound John A. Blakemore has this day prayed for and obtained an appeal, in the nature of a writ of error, to the next term of the supreme

court of errors and appeals of the State of Tennessee, to be held in the city of Nashville, on the first Monday in December next, from a judgment which Jno. Doe, lessee of William J. Whitthorn, recovered against him in the circuit court of Bedford county, now sitting in the town of Shelbyville, for the sum of one cent damages and costs of suit. Now, if the said John A. Blakemore should prosecute his said appeal with effect, or, in case he is convict therein, pay and satisfy such judgment as may be rendered against him in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

———— ————, [SEAL.]
E. COOPER. [SEAL.]

Judgment rendered 13th day of April, 1844—' Damages' - $00 01

State tax - - - - - - - - 2 25

To John T. Neil, clerk. Summons, 75 cents; bond, 20c.; entering bond, 20c.; order entering into common rule, 25c.; one security taken in court, 25c.; jury, 12½c.; judgment, 75c.; order for writ of possession, 25c.; bill of costs, 25c.; order for execution, 25c.; appeal and bond, 75c.; transcript and seal, $1 62½; seven hundred and eighty-four words, 78c. J. Mullins, sheriff. One summons, $1; delivering declaration, $1; jury, 12½ cents; calling cause, 4½ cents

$10 84½

STATE OF TENNESSEE:

I, John T. Neil, clerk of the circuit court of Bedford county, in the State aforesaid, do certify, that the above and foregoing is a full, true, and perfect transcript of all the records and proceedings had in our said circuit court, in the case of John Doe, lessee of Wm. J. Whitthorn, against Martha A. Taylor and Jehue A. Blakemore, together with a bill of costs, correctly taxed; all of which appears of record in my office.

In testimony whereof, I have hereto set my hand and affixed my private seal, there being no seal of office, at office in Shelbyville, [L. S.] this 27th day of November, A. D. 1844, and in the 69th year of American independence.

JOHN T. NEIL, *Clerk*.
By his deputy, JAMES H. NEIL.

And now, at a supreme court of errors and appeals, begun and held at Nashville, December, 1844, present the hon. Nathan Green, William B. Reese, and William B. Turley, judges, &c., these proceedings were had, to wit:

JOHN DOE, lessee of Wm. J. Whitthorn,
vs.
MARTHA TAYLOR & JEHUE A. BLAKEMORE.

This day came the parties aforesaid, by their attorneys, whereupon

as well the record and proceedings aforesaid, as the matters for error assigned by the said M. A. Taylor and John A. Blakemore, being seen and by the court here fully understood, for that it seems to the court that, in the record and proceedings aforesaid, as well as in rendering the judgment aforesaid, there is error. It is therefore considered by the court, that the judgment rendered in this cause in the court below be reversed, annulled, and held for nothing; and that William J. Whitthorn pay the costs of this court, and that execution issue, &c.

And this court, now proceeding to render such judgment as the circuit court should have given upon the agreed case, it is considered by this court, that the law is for the defendants upon the case agreed.

It is therefore considered by the court, that the defendants are not guilty of the trespass in the ejectment, and that they go hence without day, and recover of the said William J. Whitthorn the costs of this cause in this court and the court below, and that execution issue, &c.

STATE OF TENNESSEE:

I, J. P. Clark, clerk of the supreme court of errors and appeals of said State, at Nashville, do hereby certify, that the foregoing is a full and perfect transcript of the record and proceedings in the case of John Doe, lessee of William J. Whitthorn, against Martha Taylor and Jehue Blakemore, as the same appears on record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of said court, at office in Nashville, this 16th day of October, 1845, and 70th year of American independence.

J. P. CLARK.

Filed 28th December, 1846.

List of Records of cases decided in the Supreme Court U.S. at December Term 1848.

Augusta Ins^ce Co^	Hugg & Bandel	425
Allen val	Lawrence	1383.
Boston, City of	Norris	1.
Borden val	Luther	104.
Baird val	Lewis val	215.
Bank of Potomac	McLaughlin	350.
Bodley val	Goodrich	445.
Backus	Gould val	520.
Broadwell adm^r	Lewis val	891.
Borden val	Luther	895.
Blydenburgh	Colthead	1235.
Branch Bank of Ala	Mathison val	1270.
dito	Crawford val	1273.
Barnard val	Gibson	1280.
Blydenburgh	Colthead	1373.
City of Boston	Norris	1.
City of Chicago	U. States	419.
Colby	Ledden	850.

Conrad, assignee	Forgay val	1074.
Cutler	Rae	1180.
Cotheal	Blydenburgh	1235.
Crawford val	Branch Bank of Ala.	1273.
Cotheal	Blydenburgh	1373.
Dunn's heirs	M'Arthur's heirs	410.
Dinsman	Wilkes	631.
Downs	Massingill	877.
Doggett	Emerson	910.
Davidson	Mdell val	1258.
Ervin	Parry, Curator &c	455.
Emerson	Doggett	910.
Fournigaet	Perkins	562.
Forgay val	Conrad, assignee &c	1074.
Goodrich	Bodley val	445.
Gould val	Backus	520.
Gibson	Barnard val	1280.
Hunt val	Kennedy's Exors	179.
Hugg & Bandel	Augusta Ins. Co.	425.
Hunter, Treas. &c	Smith	540
Hobson	M'Donald	612.

- Hoover & Co.	Sadler	870.
- Hardeman adl	Harris	878.
- Harris	Hardeman adl	878.
- Harris	Wall	882.
- Hunt adl	Tyler, Pres. M.E.	1174.
- Inness adl	Peck adl	546.
- Irving adl	Wilson	590.
- Jenison	Townsend	832.
- Jones	U. States	842.
- Mig & Co.	U. States	5.
- Kennedy's Exrs	Hunt adl	179.
- Kennedy	Smith	918.
- Luther	Boden adl	104.
- Lewis adl	Baird adl	215.
- Lowry, Curator &c	Erwin	455.
- Leddon	Colby	855.
- Lewis &c	Lewis adm. of Broadwell	891.
- Luther	Boden adl	895.
- Laurence	Allen adl	1383.
- McLaughlin	Bank of Potomac adl	215.
- McArthur's heirs	Lewis heirs	410.

– Mace	M'Nulls	415.
– M'Donald	Hobson	612.
– Massingill	Downs	877.
– Mathison & al	Branch Bank of Ala.	1270.
– Norris	City of Boston	1.
– Nesmith	Sheldon & al	1278.
– Patton's Heirs	Taylor	492.
– Peck & al	Tunnes & al	540.
– Perkins	Tournquet & ux	652.
– Page	Stearns adm.x &c	724.
– Rae	Cutler	1186.
– Smith	Turner	98.
– Smith	Hunter, Treas.y &c	540.
– Smith	Kennochan	618.
– Shawhan & al	Sherrill, assignee &c	849.
– Stearns adm.x of Page	Page	724.
– Sadler	Hoover & Co.	870.
– Sterling	U. States	1190.
– Skelton	U. States	1222.
– Sheldon & al	Nesmith	1278.
– Turner	Smith	98.

Taylor	Dallon's heirs	492.
Townsend	Jenison	832.
Tyler, Trust. &c.	Hand & al	1174.
United States	King & Cove	5.
ditto	City of Chicago	419.
ditto	Jones	842.
ditto	Stirling	1196.
ditto	Skelton	1222.
Udell & al	Davidson	1258.
Ulls	Mace	415.
Wilson	Irving & al	590.
Wilkes	Sinsman	631.
Wherritt, assignee	Shawhan	649.
Ward	Harris	882.